

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

Roanoke Division

DONNA J. HOCKMAN,

Petitioner,

v.

Civil Action No.: 7:13-cv-00240

PHYLLIS BASKERVILLE,

Respondent.

RESPONDENT'S MOTION TO DISMISS AND RULE 5 ANSWER

The respondent, Warden Phyllis Baskerville, by counsel, pursuant to Rule 5, *Rules Governing Section 2254 Cases*, moves this Court to dismiss the petition for a writ of habeas corpus, filed by Donna Hockman, No. 1406120.

1. The reasons requiring dismissal are set forth in the accompanying brief, which is incorporated by this reference.
2. Each and every allegation not expressly admitted should be taken as denied.
3. The Court can rule on the petition, based on the pleadings and the record, without the need for an evidentiary hearing.
4. The petitioner's present claims have been exhausted for purposes of federal habeas.
5. By letters sent July 29, 2013, counsel for the respondent has requested that the state courts send directly to this Court the record of the petitioner's state trial and appeals, as well as the record for petitioner's state habeas corpus and habeas

appeal proceedings. Also, by correspondence mailed July 29, 2013, counsel has contacted the supervising judge of the Shenandoah Valley Multi-Jurisdictional Grand Jury regarding permission for counsel to file under seal with this Court a copy of the grand jury transcripts from the petitioner's case, which transcripts counsel previously received permission to possess and use.

WHEREFORE, the respondent moves this Court to dismiss the petition for a writ of habeas corpus.

Respectfully submitted,
PHYLLIS BASKERVILLE,
Respondent

/s/ _____

Virginia B. Theisen
Senior Assistant Attorney General
Attorney for the Respondent
Virginia State Bar No. 23782
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-2071 (telephone)
(804) 371-0151 (facsimile)
email: oagcriminallylitigation@oag.state.va.us

CERTIFICATE OF SERVICE

On July 31, 2013, I electronically filed this Motion to Dismiss and Rule 5 Answer with the Clerk of Court by using the CM/ECF system and a copy was mailed to the following non-CM/ECF participant: Donna J. Hockman, No. 1406120, Fluvanna Correctional Center for Women, P.O. Box 1000, Troy, Virginia 22974, the petitioner *pro se*.

/s/ _____

Virginia B. Theisen
Senior Assistant Attorney General
Attorney for the Respondent
Virginia State Bar No. 23782
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-2071 (telephone)
(804) 371-0151 (facsimile)
email: oagcriminallylitigation@oag.state.va.us